

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SHARON RIGHTMER,)	Case No. CV 08-3314-OP
)	
Plaintiff,)	
v.)	MEMORANDUM OPINION; ORDER
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	
)	
Defendant.)	

The Court¹ now rules as follows with respect to the disputed issues listed in the Joint Stipulation (“JS”).²

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¹ Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before the United States Magistrate Judge in the current action. (See Dkt. Nos. 7, 8.)

² As the Court stated in its Case Management Order, the decision in this case is made on the basis of the pleadings, the Administrative Record, and the Joint Stipulation filed by the parties. In accordance with Rule 12(c) of the Federal Rules of Civil Procedure, the Court has determined which party is entitled to judgment under the standards set forth in 42 U.S.C. § 405(g).

I.

DISPUTED ISSUES

As reflected in the Joint Stipulation, the disputed issues which Plaintiff raises as the grounds for reversal and/or remand are as follows:

1. Whether the Administrative Law Judge (“ALJ”) properly rejected Plaintiff’s credibility;
2. Whether the ALJ properly rejected the uncontroverted opinion of Plaintiff’s treating physician;
3. Whether the ALJ erred by failing to obtain the testimony of a medical expert;
4. Whether the ALJ failed to consider Plaintiff’s medically documented impairments; and
5. Whether the ALJ’s residual functional capacity (“RFC”) assessment was based on substantial evidence.

(JS at 5.)

II.

STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to determine whether the Commissioner’s findings are supported by substantial evidence and whether the proper legal standards were applied. DeLorme v. Sullivan, 924 F.2d 841, 846 (9th Cir. 1991). Substantial evidence means “more than a mere scintilla” but less than a preponderance. Richardson v. Perales, 402 U.S. 389, 401, 91 S. Ct. 1420, 28 L. Ed. 2d 842 (1971); Desrosiers v. Sec’y of Health & Human Servs., 846 F.2d 573, 575-76 (9th Cir. 1988). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Richardson, 402 U.S. at 401 (citation omitted). The Court must review the record as a whole and consider adverse as well as supporting evidence. Green v. Heckler, 803 F.2d 528, 529-30 (9th Cir. 1986).

Where evidence is susceptible of more than one rational interpretation, the Commissioner's decision must be upheld. Gallant v. Heckler, 753 F.2d 1450, 1452 (9th Cir. 1984).

III.

DISCUSSION

A. The ALJ Properly Considered Plaintiff's Subjective Complaints and Properly Assessed Plaintiff's Credibility.

Plaintiff contends that the ALJ failed to provide specific and legitimate reasons for rejecting Plaintiff's subjective complaints of pain. (JS at 6-9.) Plaintiff argues that the ALJ failed to identify which statements made by Plaintiff to her treating physician were inconsistent. (Id. at 8.) Plaintiff also claims that the ALJ failed to consider the factors in Social Security Ruling ("SSR") 96-7p³ in rejecting her subjective symptoms. (Id.) The Court disagrees.

1. Relevant Time Period.

As a preliminary matter, the relevant period for Plaintiff's claim for disability insurance benefits is January 27, 1998, the day following the Commissioner's final decision regarding her prior claim, through June 30, 2002, her date last insured ("DLI"). (Administrative Record ("AR") at 24-25, 367.) Plaintiff does not dispute this period as the relevant time period. For purposes of receiving disability insurance benefits, Plaintiff must show a recent connection to the workforce to maintain insured status. See 42 U.S.C. § 423(c); see also 20 C.F.R. § 404.130. Plaintiff also "has the burden of proving that he became disabled prior to the expiration of his disability insured status." See Macri v. Chater, 93 F.3d 540, 543 (9th Cir. 1996). Here, Plaintiff has the burden of proving that she became disabled prior to her DLI of June 30, 2002. Id.

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³ See infra, Discussion Part III.A.2.

1 **2. Applicable Law.**

2 An ALJ's assessment of pain severity and claimant credibility is entitled to
3 "great weight." Weetman v. Sullivan, 877 F.2d 20, 22 (9th Cir. 1989); Nyman v.
4 Heckler, 779 F.2d 528, 531 (9th Cir. 1986). When, as here, an ALJ's disbelief of a
5 claimant's testimony is a critical factor in a decision to deny benefits, the ALJ must
6 make explicit credibility findings. Rashad v. Sullivan, 903 F.2d 1229, 1231 (9th
7 Cir. 1990); Lewin v. Schweiker, 654 F.2d 631, 635 (9th Cir. 1981); see also
8 Albalos v. Sullivan, 907 F.2d 871, 874 (9th Cir. 1990) (an implicit finding that
9 claimant was not credible is insufficient).

10 Under the "Cotton test," where the claimant has produced objective medical
11 evidence of an impairment which could reasonably be expected to produce some
12 degree of pain and/or other symptoms, and the record is devoid of any affirmative
13 evidence of malingering, the ALJ may reject the claimant's testimony regarding
14 the severity of the claimant's pain and/or other symptoms only if the ALJ makes
15 specific findings stating clear and convincing reasons for doing so. See Cotton v.
16 Bowen, 799 F.2d 1403, 1407 (9th Cir. 1986); see also Smolen v. Chater, 80 F.3d
17 1273, 1281 (9th Cir. 1996); Dodrill v. Shalala, 12 F.3d 915, 918 (9th Cir. 1993);
18 Bunnell v. Sullivan, 947 F.2d 341, 343 (9th Cir. 1991).

19 To determine whether a claimant's testimony regarding the severity of his
20 symptoms is credible, the ALJ may consider, *inter alia*, the following evidence: (1)
21 ordinary techniques of credibility evaluation, such as the claimant's reputation for
22 lying, prior inconsistent statements concerning the symptoms, and other testimony
23 by the claimant that appears less than candid; (2) unexplained or inadequately
24 explained failure to seek treatment or to follow a prescribed course of treatment;
25 (3) the claimant's daily activities; and (4) testimony from physicians and third
26 parties concerning the nature, severity, and effect of the claimant's symptoms.
27 Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002); see also Smolen, 80
28 F.3d at 1284.

1 SSR 96-7p⁴ further provides factors that may be considered to determine a
2 claimant's credibility such as: 1) the individual's daily activities; 2) the location,
3 duration, frequency, and intensity of the individual's pain and other symptoms; 3)
4 factors that precipitate and aggravate the symptoms; 4) the type, dosage,
5 effectiveness, and side effects of any medication the individual takes or has taken
6 to alleviate pain or other symptoms; 5) treatment, other than medication, the
7 individual receives or has received for relief of pain or other symptoms; 6) any
8 measures other than treatment the individual uses or has used to relieve pain or
9 other symptoms (e.g., lying flat on his or her back, standing for 15 to 20 minutes
10 every hour, or sleeping on a board); and 7) any other factors concerning the
11 individual's functional limitations and restrictions due to pain or other symptoms.
12 SSR 96-7p.

13 **3. Analysis.**

14 Here, the ALJ discredited Plaintiff's subjective symptoms because the
15 medical evidence did not support Plaintiff's allegations of disabling pain. (AR at
16 30-32.)

17 Relying upon Plaintiff's own description of her physical limitations in her
18 disability application and at the hearing, the ALJ found Plaintiff not to be a
19 credible witness and discredited the severity of her subjective complaints, as they
20 conflicted with the medical evidence. (*Id.*) In her disability application and at the
21 hearing, Plaintiff testified, *inter alia*, that her severe neck condition and associated
22 headaches had continued unabated since 1995. (AR at 325, 341, 357, 665-71.)
23 However, the ALJ relied on a report by treating physician, Dr. Katrina Vlachos, as
24 evidence that Plaintiff's disabling symptoms improved during the relevant time
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27 ⁴ Social Security Rulings are binding on ALJs. *See Terry v. Sullivan*, 903
28 F.2d 1273, 1275 n.1 (9th Cir. 1990).

1 period. (Id. at 30-31.) The ALJ provided:

2 Dr. Vlachos prepared a report assessing the Claimant's condition before
3 and after a motor vehicle accident (MVA) on November 21, 2002 (which
4 thus occurred some months after the DLI). According to Dr. Vlachos,
5 although claimant had multiple neck surgeries before being involved in
6 the MVA, the Claimant's condition had "improved markedly in the two
7 years since her last [neck] surgery [in May 2001] and was doing well
8 with respect to her cervical spine." However, the doctor continues, after
9 the 11/2002 MVA "Mrs. Rightmer developed and continues to have
10 persisting neck pain"

11 (Id. at 31 (citations omitted).) The record supports the ALJ's summary. (Id. at
12 495-96.) The ALJ also specified that Plaintiff's disabling symptoms occurred after
13 the accident and thus, after the DLI. These symptoms which occurred after the
14 DLI are insufficient for disability insurance benefits. See Macri, 93 F.3d at 543.
15 Thus, the record supports the ALJ's adverse credibility finding, as there is evidence
16 that Plaintiff's symptoms improved during the relevant time period, despite
17 Plaintiff's testimony otherwise. Thomas 278 F.3d 958-59; Smolen, 80 F.3d at
18 1284; SSR 96-7p.

19 Plaintiff also testified that she could sit, stand, and walk for no more than a
20 few hours, and for no more than fifteen to forty-five minutes continuously. (Id. at
21 665-66.) However, the ALJ relied upon a report by treating physician, Dr.
22 Theodore Goldstein, which was contrary to Plaintiff's testimony. (Id. at 30-31.)
23 The ALJ stated:

24 [T]he available medical evidence does not establish that the
25 Claimant is disabled to the degree that she alleges. The Claimant's
26 primary treating physician, Theodore Goldstein, M.D., had indicated in
27 reports that Claimant is capable of working.

28 The first report by Dr. Goldstein was in February 2002, a few

1 months before the DLI. Dr. Goldstein reported that he had performed
2 surgery on the Claimant, and that he had precluded her from working for
3 nine months after the surgery. However, the Claimant was then able to
4 return to work with restriction on 2-19-2002.

5 The next report was in May 2004, well after the DLI. In that
6 report, Dr. Goldstein noted that despite the Claimant's lumbar spine
7 surgery (performed in October 2002), she did not appear to have any
8 significant restriction regarding her ability to stand or walk. And, while
9 the Claimant would need to avoid repetitive torsional motions of the
10 spine in flexion as well as repetitive rotational or lateral bending of the
11 cervical spine, it does not appear that she is incapable of returning to any
12 type of work. Indeed, Dr. Goldstein states that the Claimant "... would
13 appear to be capable of some type of gainful employment"
14 Additionally, Dr. Goldstein opined that the Claimant "would be well
15 equipped for a job requiring sitting most of the day working at a
16 computer." He further stated that he felt she would be able to answer
17 phones with a headset.

18 (Id. at 30-31 (citations omitted).) The record supports the ALJ's findings. (Id. at
19 547-49, 596-601.) Thus, the ALJ properly relied on Dr. Goldstein's reports
20 regarding Plaintiff's functional abilities to contradict her testimony. Thomas 278
21 F.3d 958-59; Smolen, 80 F.3d at 1284; SSR 96-7p.

22 Finally, the ALJ noted that Plaintiff relied on reports from Dr. Goldstein and
23 Dr. Vlachos after the DLI to support her disabling symptoms. (AR at 31-32.) The
24 ALJ rejected the reports as indicative of disabling symptoms for purposes of
25 procuring disability insurance benefits. (Id. at 31.) The ALJ reasoned that the
26 reports were issued after the DLI, relied on medical evidence after the DLI, and
27 failed to address Plaintiff's functional limitations or impairments, if any, prior to
28 the DLI. (Id.) Consequently, the ALJ properly disregarded these reports as

1 support for Plaintiff's disabling symptoms with respect to the claim for disability
2 insurance benefits. See Macri, 93 F.3d at 543. Thus, the record supports the ALJ's
3 adverse credibility finding, as there is insufficient evidence to support Plaintiff's
4 disabling symptoms. Thomas 278 F.3d 958-59; Smolen, 80 F.3d at 1284; SSR 96-
5 7p.

6 Plaintiff also asserts that the ALJ's credibility analysis is flawed because he
7 failed to consider the seven factors for evaluating credibility enumerated in SSR
8 96-7p. (JS at 8.) However, the ALJ was not required to discuss and analyze all of
9 the factors enumerated in SSR 96-7p. Rather he must give consideration to these
10 factors. See SSR 96-7p at *3 (an ALJ must consider the seven factors enumerated
11 in SSR 96-7p in addition to the objective medical evidence when assessing a
12 Plaintiff's credibility); see also Smolen, 80 F.3d at 1284; Bunnell, 947 F.2d at 346.
13 Here, the record as a whole reflects adequate consideration. For example,
14 testimony was elicited about Plaintiff's daily activities although the ALJ did not
15 specifically address these activities in his credibility determination. (AR at 665-
16 75.) In fact, the Court's review of the transcript indicates that testimony was
17 elicited from Plaintiff regarding all seven enumerated factors, regardless of
18 whether the ALJ explicitly mentioned the factors in the body of his decision. (Id.)
19 Further, the ALJ's decision explicitly addressed some of the factors, such as the
20 location, duration, frequency, and intensity of Plaintiff's pain and symptoms, and
21 other factors concerning the her functional limitations and restrictions due to pain
22 or other symptoms. (Id. at 30-32); see also SSR 96-7p. Moreover, other than
23 asserting that the ALJ failed to address the enumerated factors, Plaintiff cites to no
24 objective and credible evidence to support her contentions regarding her disabling
25 symptoms. (JS at 8-9.) Thus, the Court finds that the ALJ adequately considered
26 the factors enumerated in SSR 96-7p to support his adverse credibility finding.
27 See SSR 96-7p; see also Smolen, 80 F.3d at 1284; Bunnell, 947 F.2d at 346.

28 Based on the foregoing, the Court finds that the ALJ provided clear and

convincing reasons, supported by substantial evidence, for rejecting Plaintiff's subjective symptoms and discounting her credibility. Thus, there was no error.

B. The ALJ Did Not Properly Consider the Opinions of Plaintiff's Treating Physician.

Plaintiff contends that the ALJ erroneously rejected the uncontroverted opinions of her treating physician, Dr. Goldstein. (JS at 15-20.) The Court agrees.

1. Applicable Law.

It is well-established in the Ninth Circuit that a treating physician's opinions are entitled to special weight, because a treating physician is employed to cure and has a greater opportunity to know and observe the patient as an individual. McAllister v. Sullivan, 888 F.2d 599, 602 (9th Cir. 1989). "The treating physician's opinion is not, however, necessarily conclusive as to either a physical condition or the ultimate issue of disability." Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989). The weight given a treating physician's opinion depends on whether it is supported by sufficient medical data and is consistent with other evidence in the record. See 20 C.F.R. § 404.1527(d)(2). If the treating physician's opinion is uncontroverted by another doctor, it may be rejected only for "clear and convincing" reasons. Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995); Baxter v. Sullivan, 923 F.2d 1391, 1396 (9th Cir. 1991). If the treating physician's opinion is controverted, it may be rejected only if the ALJ makes findings setting forth specific and legitimate reasons that are based on the substantial evidence of record. Thomas, 278 F.3d at 957; Magallanes, 881 F.2d at 751; Winans v. Bowen, 853 F.2d 643, 647 (9th Cir. 1987).

However, the Ninth Circuit also has held that "[t]he ALJ need not accept the opinion of any physician, including a treating physician, if that opinion is brief, conclusory, and inadequately supported by clinical findings." Thomas, 278 F.3d at 957; see also Matney ex rel. Matney v. Sullivan, 981 F.2d 1016, 1019 (9th Cir. 1992). A treating or examining physician's opinion based on the plaintiff's own

complaints may be disregarded if the plaintiff's complaints have been properly discounted. Morgan v. Comm'r of Soc. Sec. Admin., 169 F.3d 595, 602 (9th Cir. 1999); see also Sandgathe v. Chater, 108 F.3d 978, 980 (9th Cir. 1997); Andrews v. Shalala, 53 F.3d 1035, 1043 (9th Cir. 1995). Additionally, "[w]here the opinion of the claimant's treating physician is contradicted, and the opinion of a nontreating source is based on independent clinical findings that differ from those of the treating physician, the opinion of the nontreating source may itself be substantial evidence; it is then solely the province of the ALJ to resolve the conflict." Andrews, 53 F.3d at 1041; Magallanes, 881 F.2d at 751; Miller v. Heckler, 770 F.2d 845, 849 (9th Cir. 1985).

2. Analysis.

Here, the ALJ rejected two reports after May 2004 by Dr. Goldstein because the reports were after the DLI for purposes of disability insurance benefits. (AR at 32); see supra, Discussion III.A. However, over the course of Plaintiff's treatment, Dr. Goldstein provided multiple reports, opining differing degrees of disabling symptoms or impairments. (See e.g., AR at 521, 545-48, 556-58, 594- 600.) In the decision, the ALJ failed to either provide clear and convincing reasons, or specific and legitimate reasons based on substantial evidence to reject Dr. Goldstein's various findings during the relevant time period. Lester, 81 F.3d at 830; Baxter, 923 F.2d at 1396; Thomas, 278 F.3d at 957; Magallanes, 881 F.2d at 751.

Accordingly, the Court finds that the ALJ committed legal error by failing to properly consider Dr. Goldstein's opinions and by failing to resolve any conflicts between Dr. Goldstein's opinions and the medical evidence. On remand, the ALJ will have an opportunity to address these issues again and should consider these issues in determining the merits of Plaintiff's case.

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C. The ALJ Did Not Err by Failing to Obtain the Testimony of a Medical

1 **Expert.**

2 Next, Plaintiff claims that ALJ erred by failing to obtain the testimony of a
3 medical expert to determine whether Plaintiff's condition equals a listed
4 impairment, and to determine the onset date of disability. (JS at 24-28.) Plaintiff
5 also implicitly contends that the ALJ improperly determined that Plaintiff did not
6 meet a listed impairment. (*Id.*) The Court disagrees.

7 **1. Applicable Law.**

8 At the third step of the sequential analysis, the ALJ must determine whether
9 a claimant's impairment meets or equals an impairment listed in the "Listing of
10 Impairments" ("Listings"). *See* 20 C.F.R. Part 404, Subpt. P, App. 1; *see also*
11 *Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050, 1052 (9th Cir. 2006) (citing 20
12 C.F.R. §§ 404.1520, 416.920); *Tackett v. Apfel*, 180 F.3d 1094, 1098-99 (9th Cir.
13 1999). The Listings set forth certain impairments which are presumed to be of
14 sufficient severity to prevent the performance of work. *See* C.F.R. §§ 404.1525(a),
15 416.925(a). If a claimant has an impairment which meets or equals a listed
16 impairment, disability is presumed, and benefits are awarded. *See* 20 C.F.R. §§
17 404.1520(d), 416.920(d); *Barker v. Sec'y of Health & Human Servs.*, 882 F.2d
18 1474, 1477 (9th Cir. 1989). An impairment "meets" a listed impairment if it is in
19 the Listings. *See* 20 C.F.R. §§ 404.1520(d), 416.920(d). An individual's condition
20 "medically equals" a listed impairment if she can demonstrate medical findings
21 related to her own impairment that are of equal medical significance to the listed
22 one. *See* 20 C.F.R. § 416.926(a)(1)(ii). An impairment "functionally equals" a
23 listed impairment if it will result in "marked" limitation in two domains of
24 functioning or an "extreme" limitation in one. *See* 20 C.F.R. § 416.926a(a).

25 The claimant has the burden of proving disability, including disability based
26 on the Listing. *Roberts v. Shalala*, 66 F.3d 179, 182 (9th Cir. 1995); *Vick v.*
27 *Comm'r of Soc. Sec. Admin.*, 57 F. Supp. 2d 1077, 1087 (D. Or. 1999). The mere
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1 diagnosis of a listed condition does not establish that a claimant “meets” the
2 Listings. Young v. Sullivan, 911 F.2d 180, 183-84 (9th Cir. 1990). “For a
3 claimant to show that his impairment matches a listing, it must meet all of the
4 specified medical criteria. An impairment that manifests only some of those
5 criteria, no matter how severely, does not qualify.” Sullivan v. Zebley, 493 U.S.
6 521, 530, 110 S. Ct. 885, 107 L. Ed. 2d 967 (1990); see also 20 C.F.R. §
7 404.1525(d). Thus, the ALJ must find that the claimant has an impairment which
8 corresponds in diagnosis, severity, and duration to a listed impairment.

9 **2. Analysis.**

10 Here, the ALJ determined that Plaintiff did not have an impairment or
11 combination of impairments that met or medically equaled a listed impairment.
12 (AR at 28.) The ALJ provided:

13 Section 1.04 of the listing of impairments, which describes disorders of
14 the spine, is not met or equaled due to the lack of evidence of nerve root
15 compression characterized by pain, limitation of motion of the spine,
16 motor loss with associated muscle weakness accompanied by sensory or
17 reflex loss. Moreover, the Agency physicians opined no listing-level
18 impairment existed. Finally, no treating or examining physician has
19 mentioned findings equal or equivalent to the criteria of any listed
20 impairment.

21 (Id. (citations omitted).) In support of his finding, the ALJ partially relied upon the
22 opinions of Drs. Goldstein and Vlachos, both of whom failed to find that Plaintiff
23 met a listed impairment. (Id. at 28, 544-603.) As to the examining physicians,
24 Plaintiff argues that the ALJ’s listing determination is erroneous because the
25 consultative physician’s residual functional capacity (“RFC”) assessment is
26 flawed. (JS at 26.) However, Plaintiff’s argument is without merit because any
27 error by the ALJ would have been harmless error, as the ALJ properly relied on
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1 substantial findings of Plaintiff's treating physicians to determine that Plaintiff did
2 not meet a listed impairment. Curry v. Sullivan, 925 F.2d 1127, 1131 (9th Cir.
3 1991) (harmless error rule applies to review of administrative decisions regarding
4 disability).⁵ Moreover, Plaintiff fails offer any evidence in support of the claim
5 that her condition, or combination of conditions, equaled a listed impairment. See
6 Lewis v. Apfel, 236, F.3d 503, 514 (9th Cir. 2001) (ALJ's step-three finding is
7 appropriate when a plaintiff offers no theory, plausible or otherwise, to explain
8 how his impairment or combined impairments equal a listed impairment); see also
9 Roberts, 66 F.3d at 182; Vick, 57 F. Supp. 2d at 1087. Accordingly, the Court
10 finds that the ALJ relied on substantial evidence to determine that Plaintiff did not
11 meet or equal Listing 1.04 or any other listed impairment.

12 Plaintiff also argues that the ALJ erred by failing to obtain the testimony of a
13 medical expert to determine that Plaintiff did not meet a listed impairment. (JS at
14 24-28.) Social Security Regulations ("SSR") 96-6p provides:

15 [An ALJ] must obtain an updated medical opinion from a medical expert
16 in the following circumstances:

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18 When no additional medical evidence is received, but in the
19 opinion of the administrative law judge or the Appeals Council the
20 symptoms, signs, and laboratory findings reported in the case record
21 suggest that a judgment of equivalence may be reasonable; or

22 When additional medical evidence is received that in the opinion
23 of the administrative law judge or the Appeals Council may change the
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25 ⁵ Plaintiff also argues that the consultative physician "paid little, if any,
26 attention to the medical evidence in file" when completing the RFC assessment.
27 (JS at 27.) However, as stated above, any error regarding the RFC assessment as
28 related to requiring medical expert testimony is harmless. Curry, 925 F.2d at 1131.
Thus, the Court declines to further discuss this issue.

1 State agency medical or psychological consultant's finding that the
2 impairment(s) is not equivalent in severity to any impairment in the
3 Listing of Impairments.

4 SSR 96-6p. Here, while Plaintiff submitted additional evidence to the Appeals
5 Council (AR at 13), the Appeals Council stated, "We find that this [additional]
6 information does not provide a basis for changing the Administrative Law Judge's
7 decision" (*id.* at 10-11). Thus, there is no support, nor does Plaintiff provide any
8 evidence, that either of the situations warranting an updated medical opinion from
9 a medical expert was satisfied. SSR 96-9p.

10 Plaintiff also argues that because the ALJ awarded her disabled widow's
11 benefits, she is presumed to be disabled, and thus, a medical expert is required to
12 determine the onset date of her disability. (JS at 28.) However, Plaintiff
13 misinterprets the requirements necessary for disability insurance benefits and
14 disabled widow's claim.⁶ As stated above, Plaintiff had the burden of proving an
15 onset of disability for disability benefits during the relevant time period, i.e., from
16 January 27, 1998 through June 30, 2002. *See supra*, Discussion Part III.A.1. Here,
17 the ALJ found that Plaintiff was not disabled during the relevant time period, and
18 consequently, ineligible for disability insurance benefits. Thus, the ALJ was not
19 obligated to have a medical expert testify to determine the onset date of the
20 disability during the relevant time period. *See Orellana v. Astrue*, 2008 WL
21 398834, at *11 (E.D. Cal. Feb. 12, 2008) (noting that "the ALJ generally is not
22 obligated to have a medical expert testify at the administrative hearing unless the
23 onset date cannot be ascertained or the expert is required to help develop the record
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27 ⁶ The Court declines to discuss the requirements for disabled widow's
28 benefits, as Plaintiff is not disputing that portion of the ALJ's decision.

1 with respect to a claimant's mental impairments").⁷

2 Based on the foregoing, the ALJ was not required to obtain the testimony of
3 a medical expert. Thus, there was no error.

4 **D. The ALJ's Failure to Consider Certain Medical Evidence Was**
5 **Harmless Error.**

6 Plaintiff contends that the ALJ failed to consider medical evidence related to
7 bilateral carpal tunnel and a knee tear. (JS at 34-35; AR at 436-37, 563.) The
8 Court finds that the ALJ erred by failing to specifically address these medical
9 impairments. However, any error by the ALJ was harmless, as there were no
10 functional limitations or disabling symptoms associated with the findings. Curry,
11 925 F.2d at 1131.

12 Plaintiff relies upon two reports to support her contention. First, on April 2,
13 2002, Dr. David Campion completed an electrodiagnostic report and found that
14 Plaintiff suffered from bilateral carpal tunnel. (AR at 436-37.) Next, on
15 November 15, 1999, Dr. Barry Rothman conducted an MRI of Plaintiff's knee, and
16 found a "tear of the medial meniscus." (Id. at 563.) Despite these findings, neither
17 doctor opined that Plaintiff suffered any functional limitations or disabling
18 symptoms from the impairments. (Id. at 436-37, 563.) Moreover, there is no
19 indication that Plaintiff complained of knee pain or pain associated with carpal
20 tunnel to her treating physicians, nor did Plaintiff allege any such pain in her
21 disability application or at the hearing. (Id. at 341, 357, 665-71.) Additionally, the
22 Court is unable to find any opinion of a physician, treating or consultative,
23 indicating that Plaintiff suffered functional limitations from a knee or carpal tunnel
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26 ⁷ To the extent that the issues on remand change the ALJ's finding as to
27 Plaintiff's disability status during the relevant time period, the ALJ would be
28 required to obtain the testimony of a medical expert to determine the onset date, if
one cannot be ascertained.

1 impairment. Accordingly, any error by the ALJ to specifically consider these
2 findings was harmless. Curry, 925 F.2d at 1131. Thus, remand is not required.

3 **E. The ALJ's Residual Functional Capacity Determination is Not**
4 **Supported by Substantial Evidence.**

5 Plaintiff contends that the ALJ's RFC assessment was not supported by
6 substantial evidence. (JS at 39-41.) The Court agrees.

7 **1. Applicable Law.**

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9 In determining a plaintiff's RFC, an ALJ must consider all relevant evidence
10 in the record, including medical records, lay evidence, and the effects of
11 symptoms, including pain, that are reasonably attributed to a medically
12 determinable impairment. Robbins v. Social Security, 466 F.3d 880, 883 (9th Cir.
13 2006) (citations omitted). Careful consideration should be given to any evidence
14 about symptoms because subjective descriptions may indicate more severe
15 limitations or restrictions than can be shown by medical evidence alone. Id.

16 **2. Analysis.**

17 Here, the ALJ assessed Plaintiff's RFC as follows:

18 [T]he claimant had the residual functional capacity to perform a
19 narrowed range of light work. Specifically, the Claimant was able to
20 lift and or carry 20 pounds occasionally and 10 pounds frequently.
21 She was able to stand/walk four hours and sit six hours out of a given
22 eight-hour work period, provided she is given the opportunity to
23 change position ever 60 minutes, the change itself to last a maximum
24 of three minutes. The claimant is limited to pushing or pulling on a
25 frequent basis on the left. She is able to do occasional climbing of
26 ramps and stairs, but no climbing of ladder, ropes or scaffolds. She is
27 able to do less than occasional balancing and crouching, and no more
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1 than occasional bending or stooping. The claimant is precluded from
2 kneeling or crawling activities and bilateral reaching overhead. She is
3 able to frequently reach in all directions with the left upper extremity
4 (LUE), and frequently handle with the LUE. She is unable to perform
5 extreme range of motion of the head and neck in any direction, and
6 she should avoid twisting, repetitive rotation, and lateral bending of
7 the neck. She is able to frequently move her head and neck 50% of
8 the extreme range of motion of the head and neck in any direction.
9 She is able to keep her head and neck in a fixed position of 30 minutes
10 at time.

11 (AR at 29.) At no point in the decision did the ALJ indicate that he considered all
12 the evidence, including statements and findings of the treating and examining
13 physicians, consultative physicians, and other medical consultants. The ALJ also
14 failed to analyze the various medical opinions in the lengthy record. Moreover, the
15 ALJ's RFC finding, even if supported by substantial evidence, is inherently
16 inconsistent. The ALJ failed to explain how Plaintiff was precluded from
17 "bilateral reaching overhead," but was able to "frequently reach in all directions
18 with her left upper extremity."⁸ Accordingly, the Court finds that the ALJ
19 committed legal error as the RFC assessment is unsupported by substantial
20 evidence. The ALJ should consider the entire medical record, including statements
21 and findings of the treating and examining physicians, consultative physicians, and
22 other medical consultants to properly assess Plaintiff's RFC. On remand, the ALJ
23 will have an opportunity to address these issues again and should consider these
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27 ⁸ To the extent the ALJ meant that Plaintiff could reach overhead
28 individually, the ALJ should clarify this distinction in the RFC finding.

1 issues in determining the merits of Plaintiff's case.⁹

2 **F. This Case Should Be Remanded for Further Administrative**
 3 **Proceedings.**

4 The law is well established that remand for further proceedings is
 5 appropriate where additional proceedings could remedy defects in the
 6 Commissioner's decision. Kail v. Heckler, 722 F.2d 1496, 1497 (9th Cir. 1984).
 7 Remand for payment of benefits is appropriate where no useful purpose would be
 8 served by further administrative proceedings, Kornock v. Harris, 648 F.2d 525,
 9 527 (9th Cir. 1980); where the record has been fully developed, Hoffman v.
 10 Heckler, 785 F.2d 1423, 1425 (9th Cir. 1986); or where remand would
 11 unnecessarily delay the receipt of benefits. Bilby v. Schweiker, 762 F.2d 716, 719
 12 (9th Cir. 1985). Here, the Court concludes that further administrative proceedings
 13 would serve a useful purpose and remedy the administrative defects discussed
 14 herein.

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 23 ⁹ Plaintiff also argues that the ALJ improperly provided a clarification to the
 24 vocational expert ("VE") as to the meaning of prolonged. (JS at 40.) Plaintiff fails
 25 to cite to any authority that the ALJ erred by providing the VE with an example of
 26 prolonged period of time. The Court also notes that staying in a fixed position for
 27 sixty minutes is certainly a prolonged period of time. (AR at 679.) Moreover,
 28 Plaintiff's attorney failed to object to this definition of prolonged period of time at
 the hearing. Thus, the Court does not find that the ALJ erred in providing an
 example of prolonged period of time to the VE.

IV.

ORDER

Pursuant to sentence four of 42 U.S.C. § 405(g), IT IS HEREBY ORDERED THAT Judgment be entered reversing the decision of the Commissioner of Social Security and remanding this matter for further administrative proceedings consistent with this Memorandum Opinion.

Dated: November 24, 2009



HONORABLE OSWALD PARADA
United States Magistrate Judge